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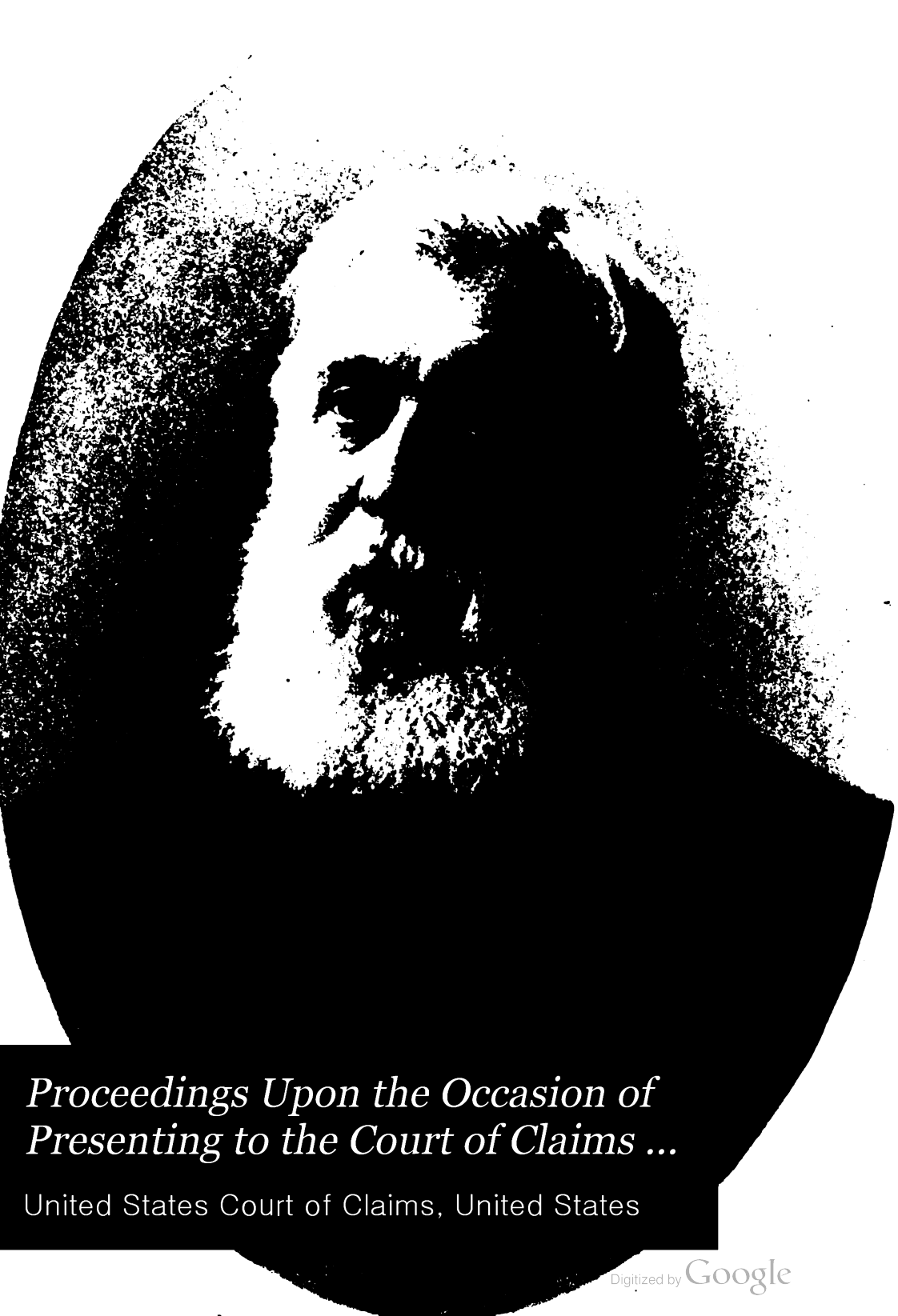
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*Proceedings Upon the Occasion of
Presenting to the Court of Claims ...*

United States Court of Claims, United States

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**FROM THE ESTATE OF
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RECEIVED FEBRUARY 19, 1936



J. C. Bancroft Davis



PROCEEDINGS UPON THE OCCA-
SION OF PRESENTING
TO THE COURT OF CLAIMS
OF THE UNITED STATES
A PORTRAIT OF
John Chandler Bancroft Davis
FORMERLY A JUDGE OF
THAT COURT

WASHINGTON
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FROM THE ESTATE OF
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J. C. BANCROFT DAVIS

Mr. Hinckley's work is already familiar to you in the excellent portraits of Chief Justice Richardson, Chief Justice Nott, Judge John Davis, and Judge Weldon, now on the walls of this room.

John Chandler Bancroft Davis sat on this Court from January 7, 1878, to December 9, 1881, when he resigned. He again became Judge December 20, 1882, and took his seat January 2, 1883. During this interval the vacancy on the bench was not filled. In November, 1883, he resigned and became Reporter of the Supreme Court of the United States.

The opinions delivered by him in this Court (sixty-five in all) are found in volumes 13, 14, 15, 16, and 18 of the Court of Claims Reports. Twenty-one of these were taken to the Supreme Court; nineteen were affirmed and two reversed.

The Dainese case, 15 Court of Claims, 70, shows his exhaustive knowledge of the relations between Christianity and Mohammedanism after the Ottoman Empire commenced to substitute treaties and international law for the absolute supremacy of the Koran.

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His dissenting opinion in the Caldera cases also shows his love for historical accuracy, and the breadth of his knowledge in all international matters.

The Erwin case, the opinion in which was delivered by Judge Davis, is the leading case on the subject of transfers of claims by operation of law, and is invariably cited when Section 3477 of the Revised Statutes comes before the courts.

In the spring of 1884 he appeared before this Court as a member of the Bar and presented the resolutions adopted by the Bar on the occasion of the death of Judge Hunt, and paid a feeling and eloquent tribute to his character as a man, as a judge, and as a statesman.

He was born at Worcester, Massachusetts, December 19, 1822; he was the son of "Honest John Davis"; was graduated at Harvard University, in 1840; was admitted to the Bar and practiced law in New York until 1849, when he was appointed Secretary of the United States Legation at London.

Worcester

In 1852 he returned to the United States and resumed the practice of law. He appeared professionally before the London Commission

in New York/

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of 1853, of which Mr. Seward remarked that it had the prestige of complete and even felicitous success.

In 1869 he became Assistant Secretary of State. The same year the President of the United States was selected by Great Britain and Portugal to arbitrate their controversy as to the sovereignty and ownership of the island of Bulama, off the west coast of Africa. The President, compliant with the treaty provision that he should arbitrate either in person, or by some one named by him, designated Mr. Davis. His report recognizing the title of Portugal was adopted by President Grant and communicated by him to the Ministers of the respective Governments April 23, 1870. The British Minister expressed the thanks of his Government, and assured the President that immediate and unreserved effect would be given to the award.

The Minister, Mr. Thornton, stated further that he had a snuff-box, bearing Her Majesty's cipher, enriched with diamonds, which Her Majesty desired Mr. Davis to accept as a mark of consideration.

On the 9th of January, and the 24th of

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January, 1871, Mr. Davis was present at conferences between Sir John Rose, of Canada, and Mr. Hamilton Fish, Secretary of State. It was then that conciliatory negotiations were commenced which led to the treaty for a settlement of the Alabama Claims. How successful were the negotiations may be seen from the treaty of May 8, 1871, which provided for neutrality rules effective *in futuro*; and in which Great Britain, while denying that the rules had theretofore been in force, consented to the settlement of the Alabama Claims in accordance therewith.

In February, 1871, he was Secretary for the United States on the British American Joint High Commission, at Washington; and on June 29, 1871, he became Agent for the United States before the Geneva Tribunal. He again became Assistant Secretary of State January 24, 1873, which office he filled until 1875, when he was made Minister to Berlin.

On December 9, 1881, Judge Davis resigned from the Court, for the purpose, it is understood, of concluding some important matters in the Department of State left over from the preceding administration. Mr. Frelinghuysen

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became Secretary of State December 19, 1881, and on the 20th Mr. Davis became Assistant Secretary of State for the third time.

When he resigned the second time from this Court, he was appointed Reporter of the Supreme Court of the United States. Jeremiah S. Black, who had been judge of the Supreme Court of Pennsylvania, Attorney-General and Secretary of State of the United States, was the Reporter of the Supreme Court during the years 1861 and 1862. There is a tradition that he said, when he took the office, that he did so because he was satisfied that if he was to attain immortality he must take an outside passage.

Such could not have been Judge Davis's motive, for his name is not found on the outside of the seventy-nine volumes which he reported, and it appears only upon the title-page. When he resigned in October, 1902, after nineteen years' service as Reporter, the Justices of the Supreme Court expressed their sincere regret and their earnest hope that he would enjoy for many years his well-earned repose.

He continued to reside in Washington until

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his death, in 1907, crowning his life of labor with an old age of ease.

After so long a life spent in the public service, he might have exclaimed with pride —

Quæ regio in terris nostri non plena laboris!

REMARKS OF FRANCIS PRESTON BLAIR SANDS,
ESQUIRE

If the Court please: When I look upon this portrait of Judge Bancroft Davis it recalls so many happy days of my early manhood that I cannot be wholly silent on this occasion.

I look back upon those days, when the gloom that had followed the close of the Civil War was beginning to disappear, and there was a gradual resumption of the normal conditions socially that had been interrupted by that war. Amongst the most cherished friends of my parents were the family of Judge Bancroft Davis who, coming here as Assistant Secretary of State with Secretary Fish, became a near neighbor of my father. Shortly afterward he moved and settled permanently in the residence now occupied by his widow, where there was thenceforward an ideal home of culture and refinement.

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To have been numbered among their friends is the first delightful recollection revived by that portrait. I recall, and can see before me, the many gatherings of distinguished guests who were welcomed to that hospitable home, wherein I made many eminent and charming acquaintances, which ripened into friendships later on during life. I recall the honors that were paid him because of his merit and ability; when he was made Judge of this Court; when called by Secretary Frelinghuysen to his side to aid in some special work of great importance under the Department of State. Returning later to this Bench he left it, as I gathered at the time, simply that he might get in closer touch with those master minds of the Supreme Court of the United States who were always his devoted friends.

In the name of my brothers of the Bar, I think it proper to express our appreciation of and thanks for the generosity of the gracious lady whose present is henceforward to occupy a place upon the walls of this hall of justice. To us who knew Judge Davis the presence of that portrait in this chamber is most gratifying.

Knowing the importance of the business

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before this Court, it is not my purpose to indulge in eulogy of his character and attainments, nor to speak of his ability as a judge, nor of his devotion to the discharge of the responsible duties that devolve upon a Judge of this Court; but it is my desire simply to add a thought that follows naturally to my mind and to touch upon a lesson that will be taught henceforward by the presence of the portrait of Judge Davis in this chamber.

To us of the Bar these portraits are not mere stretches of canvas and paint that hang upon these walls. When we look upon them they revive memories as to each individual that are measured by the degrees of our intimacy with and friendship for them respectively.

As they look down upon us from their frames, we recall their dignity as jurists, their uprightness, their fidelity to their duties here, which won the respect and the regard of all, and with this addition to their number we, humble advocates, can feel still greater confidence when we come before the Court with causes which we believe to be just.

I think I can read, if your Honors please, the thoughts that are yours as you daily enter

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this chamber, and look around upon these faces of your honored predecessors in office; and I know that with the most proper and justified self-consciousness your Honors' thoughts are these: "We know that we are as upright, as able, and as just as they were. We know that our judgments are rendered with the fairness that equals theirs, and we have confidence now, as in the past, that the results of our labors will bring for us the same honors and appreciation that were accorded to those whose portraits are before us."

These are the thoughts that come to me on this occasion, and make it proper for me again to express the thanks of the Bar for the generosity that has prompted this gift to the Court.

REMARKS OF HONORABLE FRANK WARREN
HACKETT

May it please the Court: Listening to the felicitous words of my friend Mr. Sands, as I have been doing, it would seem as though nothing more were needful to be said, at least upon the topic of the portrait itself; and yet I may be pardoned for a single passing allusion.

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I doubt if there be another here, or even in Washington, who can say that he knew personally each individual whose portrait hangs upon these walls. This good fortune is mine, because, as I have before stated in this chamber,¹ I was presented by my father, when I was a youngster, to Chief Justice Gilchrist, of New Hampshire, who was the first Chief Justice of this Court. Let me say, in passing, that I hope that a portrait of Mr. Justice Loring, of proper style and size, will some day be added to this collection.

I am very grateful to be asked to say a word about Judge Bancroft Davis, for I claimed him as one of my best friends. I should indeed be lacking in gratitude, were I not to give utterance here to my sentiment of strong affection for him, and of my admiration for his superior qualities. As a Judge of this Court he felt it his duty to protect the Treasury; but at the same time he knew that the best protection afforded to the Treasury consists in rendering speedy justice to claimants. Although his term of office was brief, he displayed here an ability, and a talent, that rank

¹ 44 Court of Claims Reports, xxiii.

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him among the very first of the eminent judges of this high tribunal.

It is proper for me, associated as I was in my younger days with Judge Davis, to say a word regarding the great service he rendered his country before the Geneva Tribunal of Arbitration. One is tempted, who studies the history of that very important occurrence, to exaggerate the quality and the extent of the services therein of the Agent of the United States. But bearing in mind this temptation, I feel fully justified in asserting that the more closely a study is made of what Bancroft Davis at that time did for his country, the higher will be our estimate of his ability, and the deeper will be our feelings of gratitude.

It is difficult for the present generation to understand completely the condition of affairs which existed at the time when the Treaty of Washington was entered into, and followed up by that most successful law-suit, the prosecution of the claims of the United States against Great Britain, at Geneva. It should be said of Hamilton Fish and Bancroft Davis, that each in his own sphere was a man of remarkable acquirements, of unusual sagacity

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and force of character. Happily they worked jointly with that perfect harmony so requisite in doing their duty to their country at what was really a critical period. Of course, I am not allowed, because of the little time at my disposal, to go into any exposition of the subject; but I can say, from a pretty fair knowledge of what was done at Geneva, that it was most fortunate for the country that two such men at that time were at the head of the Department of State.

I want to add one thing with regard to the fame of Bancroft Davis. It is assured. There are writers who have been somewhat governed by the utterances of a very prominent journal of this country, which went into the homes of students and college professors, a newspaper hostile to the insertion of the "Indirect Claims" in our "Case." Some of those literary men, who have been influenced by that paper, are historians. Thus it has somehow got into the public mind that the insertion of the "Indirect Claims" in our "Case" at Geneva was a blunder. It was no blunder. Far from it! No lawyer, no publicist, no scholar, who applies himself to a study of the facts, and

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who has a practical sense of what was accomplished before that tribunal, can harbor that thought for a moment. I say this much because I was present at the time, close by the side of Mr. Davis.

He who has not read, and read intently, the history of that trying season has no conception of the imminent peril into which this country was brought at the time of the unparalleled excitement in England over the "Indirect Claims." Had it not been for the firmness of Bancroft Davis, standing close to his duty as he saw his duty, and knowing that he was right — had it not been, I say, that we had a man of that calibre, of that steadiness, on the spot, disaster would certainly have overtaken us. That one thing, that adherence to what he conceived to be right, which enabled the United States to stand firm in its attitude as the complainant at Geneva, is what has entitled Bancroft Davis to the lasting praise of his countrymen.

I wish that I had time to go into a discussion of the subject, but this is hardly the proper place for doing so. Still, I would have a note of the conduct of our Agent in that emergency

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borne upon the records of this Court, since it adds to the lustre and to the reputation of the Court itself that one of its honored members, at that crisis of our national affairs, had been the man unflinchingly to do his whole duty as he understood it. Bancroft Davis did it, and led the way to our triumph at Geneva.

It is a curious circumstance, and an interesting fact, too, that uncle and nephew¹ both came to this Court from the Department of State, each having been an Assistant Secretary of State, and each having done service there to the complete acceptance of the country.

Judge Davis was a many-sided man. He was, first of all, a good — nay, more than that, a most excellent — lawyer. Then he had enjoyed an experience, for one term at least, in the Legislature of New York. He served as a Secretary of Legation at the Court of St. James, where he acquired an intimate knowledge of the duties of a diplomat. When he returned to New York, and took up anew the practice of his profession, he was for a considerable period the American correspondent of the London *Times*, an office which in that day

¹ Judge John Davis.

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was exacting, requiring as it did an acquaintance with pretty much all the public business that was going on in this country, and a knowledge of its diplomatic and political significance. This work he accomplished with marked ability. Afterward he came here to the Department of State; and, as I have already said, he and Mr. Fish acted in perfect harmony. His record challenges comparison with that of any Secretary of State, or Assistant Secretary, from the beginning of the Government down to the present day.

Few writers equal Judge Davis in purity and strength of style. Whatever came from his pen was sure to interest the reader. The "Case" at Geneva possesses almost a fascination, so delightfully is the story told. *Mr. Fish and the Alabama Claims*, a valuable little book, would have established the reputation of any professional writer; while his reports of the decisions of the Supreme Court of the United States attest how skilful was the hand that brought each successive volume before the public.

But I must conclude these remarks by simply saying that to me personally it is an

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unspeakable pleasure that I can come here, and behold the familiar features of my old and dear friend. It does not go beyond the bounds of a judicious estimate to declare of Judge Davis that preëminently he showed himself to be a man of rare natural gifts. His acquirements were solid and extensive. His knowledge of men and of affairs, both at home and abroad, was of a surprising thoroughness. To these qualities, and to a love of work, there was added a power of expressing felicitously the conclusions which he had reached by a process of reasoning unusually clear.

With diligence, laboring in a field wherein the ablest statesmen have found it difficult to command success, Bancroft Davis achieved results, alike of great moment and of an enduring value. A true American, he has deserved well of his country. As the years go by, those who shall read the record of his long and useful public service will hold his memory in lasting honor.

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REMARKS OF CHIEF JUSTICE STANTON JUDKINS PEELE

Mr. Blair; Mr. Sands; Mr. Hackett: The Court with gratitude accepts from Mrs. Davis this portrait of her late husband, John Chandler Bancroft Davis, a former member of this Court. The Clerk is requested to cause the portrait to be appropriately hung on the walls of this Court with those of his honored associates.

It has fallen to the lot of few men to have filled so many important positions as Mr. Davis. From college to the practice of the law in New York, then in the foreign diplomatic service, then back to the law and with it correspondent for several years of the *London Times*, and in the legislature of New York, then in the State Department as Assistant Secretary, then Agent of the United States at the Court of Arbitration, Geneva, to adjust the Alabama Claims, then Minister to Germany, then a member of this Court, then back to the State Department as Assistant Secretary, then re-appointed on this Court, where he served until appointed Reporter of the Supreme

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Court of the United States in 1883, which latter position he held until 1902. Various other positions of trust and responsibility were held by him, for which he was highly commended, as referred to by Mr. Blair, Mr. Sands, and Mr. Hackett. In all the positions held by Judge Davis, at home and abroad, he reflected credit upon himself and his country, and well deserves to be placed among those courageous men who made the most of their opportunities for useful service.

But Mr. Blair, Mr. Sands, and Mr. Hackett have told you of his work as a Judge of this Court and as Reporter of the Supreme Court; and I need only say that the position of Judge Davis as citizen, lawyer, judge, legislator, and diplomat, as well as his high standing in social circles, entitles him to recognition alongside the foremost of his contemporaries.

May his portrait this day received inspire us all to greater achievement in the days to come.

I am sure the Bar will unite with me in expressing to Mrs. Davis our united gratitude for the honor she has done the Court in presenting to it this portrait of her late husband.

J. C. BANCROFT DAVIS

The Clerk will please transmit to Mrs. Davis a copy of the proceedings attending the presentation and acceptance of the portrait.

LETTER OF THE CLERK

WASHINGTON, D. C.,
January 20, 1912.

DEAR MRS. DAVIS:

Pursuant to the last paragraph of the response of the Chief Justice to the remarks of Mr. Blair, Mr. Sands and Mr. Hackett, in presenting to the Court the portrait of your late husband, I have the honor to transmit herewith the proceedings attending the presentation and acceptance of the portrait.

Permit me at the same time to extend my personal thanks to you for presenting the portrait to the Court.

Sincerely yours,
ARCHIBALD HOPKINS.

MRS. FREDERICA G. DAVIS,
1621 H Street, N.W.,
Washington, D.C.

J. C. BANCROFT DAVIS

LETTER OF EX-CHIEF JUSTICE NOTT¹

WILLIAMSTOWN, MASS.,

February 6, 1912.

DEAR MR. BLAIR:

My acquaintance with Judge Davis goes back to the time when he was a member of the firm of Eaton and Davis, with an office in Wall Street, New York. He was older than I was in years, and far my senior in experience, prestige, and success. Hence I remember him well.

If there be any such element as heredity, Judge Davis was endowed with its virtues, and surrounded by its most fortunate influences. The good and the great were behind him and around him. He was the son of two of the distinguished families of Massachusetts — distinguished for intelligence, scholarship, industry; for personal probity and civic virtues,

¹ Ex-Chief Justice Nott intended to write this letter in season to have it read as a part of the proceedings, but was unavoidably delayed in so doing. He is the sole survivor of the Judges constituting the Court when Judge Davis took his seat upon the bench on the first Monday of January, 1878, — namely, Chief-Justice Charles Daniel Drake, Judges Charles Cooper Nott, Ebenezer Peck, and William Adams Richardson.

Charles Cooper Nott (born, September 16, 1827) was appointed by President Lincoln a Judge of the Court of Claims, February 22, 1865. On the 23d November, 1896, he became Chief-Justice, from which office he retired December 31, 1905.

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and for exalted public station; and he was allied to one of the most eminent families of New York, whose name was written on the Constitution itself, and on the early rolls of the Senate, as representing, successively, two of the four greatest States of the new Government; and whose living members, during the stormy political decade before the Civil War, were found in the office of the State Executive, in the Presidency of a great University, and in the very highest business circle of the city. We may almost say, as we contemplate this extraordinary combination of the past and present, that there coursed in his veins, and mingled in the channels of his daily life, the best blood and the best influences of American biography. Certainly in no young man in the great city were so many elements united which made for future personal distinction and intellectual success. In this land of ours, unhappily, it is not, as a rule, those who come into the world endowed with wealth, and family virtue, and thrift and industry and self-denial, who retain success; and when I look around and see distinguished American names dishonored by those who bear them, I honor

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Judge Davis for having risen above the evil influences and entanglements of the age, and for having gained his "other five talents," and brought them to the master he zealously served, — the Public Welfare.

If Judge Davis's period upon the Bench had been prolonged and unbroken, unquestionably he would have attained great distinction as a jurist. But judicial service was not his lifework; and unquestionably his greatest success was achieved in the diplomatic field. Placed amidst some of the ablest of English-speaking lawyers, and confronting some of the living masters of international law, he attained eminence. The "Case" presented in the Geneva Arbitration was internationally colossal, and historically monumental. If there be a member of our Bar who does not know of the magnitude and difficulties and vicissitudes of the great case, let him read the recent *Reminiscences of the Geneva Tribunal* of our brother Hackett, who was himself an eye-witness of every act and scene in its drama, and who is moreover a witness known to us, and in whose testimony we place our firm reliance.

J. C. BANCROFT DAVIS

This letter, which I write in response to your kind invitation, gives no space for judicial review or personal anecdote. The retired judge, if he will look back, must needs see behind him "the wreck of matter"; and of the wreckage there is none sadder to see than the vacant places. The earliest act I can remember of Judge Davis, after he came upon the Bench, was his doing my work for me when I was in a weak and convalescent state; and the last thing I can recall was his immediate letter of congratulation when I was promoted to the office of Chief Justice. Different qualities blended in him. He was rigorous in the discharge of duty, and unfaltering in the performance of the hardest official work; and with a certain sternness of purpose he was courteous and kind, and far more than ordinarily practiced in the amenities of refined life. He was one of the few of whom, when I contemplate what they did and what they failed to do, I can say: It is well that he lived, and it is well that he be remembered.

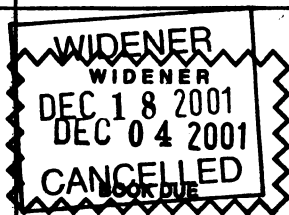
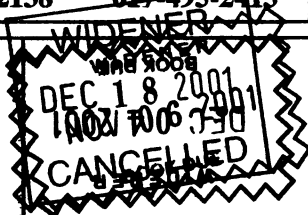
CHARLES C. NOTT.

JOHN S. BLAIR, ESQUIRE,
WASHINGTON.

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